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In re Application of
J.T. Lin
Application No. 09/084,441
Filed: May 27, 1998
Attorney Docket No. 62-575

:
: DECISION GRANTING
: PETITION
:
:

This is a decision on the petition filed June 18, 1998, requesting that the above-identified reissue application be accorded a filing date of May 27, 1998.

The application was deposited on May 27, 1998, as a reissue application of U.S. Patent No. 5,520,679. However, on June 15, 1998, Initial Patent Examination Division mailed a Notice requiring drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that Figures 1-11B are described in the specification

On June 18, 1998, five (5) sheets of drawings containing Figures 1-11B and the present petition were filed. Applicant argues that the reissue application was complete as filed on May 27, 1998, because the application was accompanied by a request to transfer the original drawings from U.S. Patent No. 5,520,679 to the present reissue application.

The argument is not well taken. The request filed on May 27, 1998, to transfer drawings is found in the file. However, applicant did not supply a copy of the original drawings from U.S. Patent No. 5,520,679 at the time the reissue application was filed as required by 37 CFR 1.174. Section 1.174(a) states that:

The drawings upon which the original patent was issued may be used in reissue applications if no changes whatsoever are to be made in the drawings. In such cases, when the reissue application is filed, the applicant must submit a temporary drawing which may consist of a copy of the printed drawings of the patent or a photoprint of the original drawings of the size required for original drawing. (emphasis supplied)

See also, MPEP 1413 (7th ed. 1998). Accordingly, the "Notice" mailed June 15, 1998, is correct.

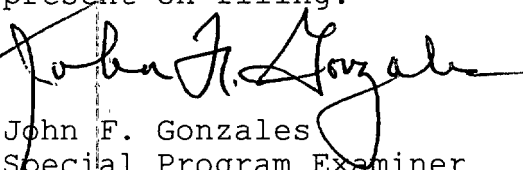
However, the requirement for a temporary drawing is a requirement of the rules. Under the circumstances of this case, the rule may be waived. The petition is, accordingly, construed as one filed under 37 CFR 1.183.

As so construed, the petition is granted.

The petition fee will not be refunded, since a petition under 37 CFR 1.183 was necessary to correct applicant's filing error.

The copy of the 5 sheets of drawings supplied with the petition will be used to process the application.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of May 27, 1998, using the 5 sheets of drawings supplied on June 18, 1998, and for indication in PTO records that 5 sheets of drawings were present on filing.


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